

*Several Federal Courts of Appeals have affirmed sentences in odometer fraud cases where the sentences were based in part on findings of consumer loss that were \$4,000 per car or more. Several of these cases are "unpublished," but most of them are available on Westlaw. Some are also published in the Federal Reporter series, as indicated below. Numerous district courts have also made such loss findings.*

United States v. Whitlow, 979 F.2d 1008 (5th Cir. 1992). The court affirmed a loss finding of \$4,000 per car. The district court had noted that the National Automobile Dealers Association guide for used car values stated that "High Mileage" deductions should not reduce the value of a vehicle by more than forty percent. Accordingly, the district court calculated the loss per vehicle as forty percent of the average \$10,000 retail purchase price of the cars. This resulted in a loss per car of \$4,000, which the Fifth Circuit said was plausible in light of the record as a whole. 979 F.2d at 1012.

United States v. Berndt, 86 F.3d 803, 811 (8th Cir. 1996). The defendant received a sentence of 37 months for clocking 80 - 100 cars. The loss finding of \$4,000/car was not contested, but is mentioned in opinion.

United States v. Jarrahi, et al., Nos. 97-4289, 4311 (4th Cir., May 11, 1998), 1998 WL 230825 . Defendants appealed sentencing guideline loss findings. Both defendants received 26-month jail terms. The Fourth Circuit held that the district court did not commit clear error by holding the defendants responsible for rollbacks committed by others even though the defendants were in a rather "loose-knit" association in which they purchased vehicles for each other. The loss finding was just over \$4,800 per car on a total of 364 cars.

United States v. Carroll, et al., Nos. 97-4022, 4259 (November 19, 1998), 1998 WL 801880. Richard Carroll and Charles Granata were convicted after trial and sentenced to 46 and 38 months in prison, respectively. The court found that the ultimate consumer purchaser was the real victim of the crime, and that a loss estimate of \$6,000 per car was reasonable.

United States v. Alami, 1997 WL 570867 (4th Cir., September 16, 1997), the court upheld a loss finding under the Sentencing Guidelines of \$6,000 per car. That was the average difference between the price defendants paid for the cars, and the ultimate consumer purchase prices.

United States v. Fraaza, No. 97-3863 (7th Cir., March 12, 1998), 1998 WL 122159. Fraaza pled guilty to one count of making false odometer disclosure statements, and received a 10-month jail term. He had altered odometers on nine cars which were 9-13 years old, and sold at retail for a total of less than \$30,000. While the loss finding is relatively low on a per car basis, the Seventh Circuit upheld the district court's loss finding, which was based on 50% of consumer price or \$.06 per mile removed, which led to a loss of \$10,000 to \$20,000.

United States v. Gaitin, 185 F.3d 870 (9th Cir. 1999) (table), 1999 WL 459538, \*1 (affirming loss estimate of \$4,000 per vehicle).

See United States v. Sprague, 35 F.3d 559 (5th Cir. 1994) (table) (affirming \$4,000 loss per vehicle estimate); United States v. David Allen Hatley, Crim. No. SA-96-CR-230 (W.D. Tex. December 13, 1996) (applying \$6,000 loss per vehicle); United States v. Hampton, No. SA CR 96-40-GLT (C.D. Cal. Oct. 16, 1996) (rejecting PSR recommendation of \$3,200 per vehicle loss estimate and holding that loss estimate should be \$4,000 per vehicle); United States v. Soltanifar, No. 2:95CR00268-001 (M.D.N.C. June 3, 1996); United States v. Sadeghi, No:95CR00267-001 (M.D.N.C. May 7, 1996) (finding loss to be \$4,000 per victim); United States v. Rossi, Cr. No. 94-506 (E.D. Pa. Aug. 1, 1995); see also United States v. Welch, Crim. No. 93-30004-F (D. Mass. October 19, 1993) (adopting PSR loss estimate using \$4,000/car figure); United States v. Cooper, Cr. No. HCR 92-0149 (N.D. Ind. March 3, 1993) (same); United States v. Coker, Cr. No. H-92-00089 (S.D. Tex. Aug. 7, 1992) (same).